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being a passenger voluntarily, was so far identified with the carriage that want of care on the part of the driver would bar plaintiff's action. And this doctrine has been followed in some of the states. See *Lockhart v. Lichtenthaler*, 46 Pa. St. 151. But has been overruled in England, *The Bernina*, L. R., 12 Prob. Div. 58; and repudiated by the United States Supreme Court, *Little v. Hackett*, 116 U. S. 366; the weight of authority being strongly against it. *Eaton v. Boston, etc., R. Co.*, 11 Allen (Mass.) 500. And as to private conveyances, *Doctoroff v. Metropolitan St. Ry. Co.*, *supra*, is in harmony with the general trend of the more recent decisions. *Cooley on Torts* (3d Ed.), 1473; *Hoag v. N. Y. Cent., etc., R. Co.*, 111 N. Y. 199. But if the driver is under plaintiff's control, his negligence is imputable. *Read v. City and Suburban Ry. Co.*, 115 Ga. 366. Or if two are engaged in a joint enterprise and each has an equal right to direct movement of the vehicle. *Boyd v. Fitchburg R. Co.*, 72 Vt. 89. However, in *Lake Shore, etc., R. Co. v. Miller*, 25 Mich. 274, it was held that the contributory negligence of a master is imputable to servant; and of a husband to wife in *G., C. & S. F. Ry. Co. v. Greenlee*, 62 Tex. 344. And the doctrine of *Thoroughgood v. Bryan*, *supra*, is approved as to private conveyances in *Prideaux v. City of Mineral Point*, 43 Wis. 513.

NEGLIGENCE—IMPUTED NEGLIGENCE—PARENT AND CHILD.—*ATCHISON, T. & S. F. RY. CO. v. CALHOUN*, 89 PAC. 207 (OKLA.)—*Held*, that in an action by an infant of tender years, in its own right, for personal injuries arising from negligence of a railway company, the fault or negligence of its mother or a third party, if any, contributing to such injury, cannot be imputed to the child.

In this country much conflict exists in the law on this subject. In England, the negligence of the custodian is imputed to the infant and recovery is denied. *Waite v. Northeast R. Co.*, El. Bl. & El., 719; *Singleton v. Eastern Counties R. Co.*, 7 C. B. (N. S.) 287. In the United States the leading case in harmony with the English rule is *Hartfielder v. Roper*, 21 Wend. (N. Y.) 615, where it was held that a child of two years who was run over while playing in the public street, was not entitled to recover for the negligent injury, because of the negligence of the parents in thus exposing him to injury. This case has been followed in several states: *Casey v. Smith*, 152 Mass. 294; *Cumberland v. Lottig*, 95 Md. 42; *Leslie v. Lewiston*, 62 Me. 468. But in at least twenty-three states its doctrine has been repudiated: *inter alia*, see *Robinson v. Cone*, 22 Vt. 213; *Erie Pass. Ry. Co. v. Schuster*, 113 Pa. St. 412; *Chicago City Ry. Co. v. Wilcox*, 138 Ill. 370. In a suit by the parent in his own behalf for an injury to the child, the plaintiff's contributory negligence is a defense. *Williams v. Texas, etc., Co.*, 60 Tex. 205; *Tucker v. Draper*, 62 Neb. 66. But the negligence of one parent will not defeat the action of another. *Atlanta, etc., Ry. Co. v. Gravitt*, 93 Ga. 369; *contra*, *Toner v. South Covington, etc., St. Ry. Co.*, 109 Ky. 41.

PARTITION—SCOPE OF INQUIRY.—*ROLB V. EVERETT*, 65 ATL. (N. J.) 732.—*Held*, that in a suit for partition the court would not determine the validity of a tax title asserted by defendant, but would hold the case to await the decision of a court of law as to the validity of such title.

Bills for partition of land must allege a seisin in possession in both complainant and defendant. *Culver v. Culver*, 2 Root (Conn.) 278. *Bolin v. Jacquelin*, 22 N. Y. Supp. 193. At common law neither title nor right to

possession could be determined in an action for partition, *Cave v. Holford*, 3 Ves. Jr. 656; *Nichols v. Nichols*, 28 Vt. 228; and if the question of title be purely legal, in absence of statute, a court of equity will relegate the party to his remedy at law, *Pierce v. Rollins*, 83 Me. 172, either dismissing the bill, *Riverview Cemetery Co. v. Turner*, 24 N. J. Eq. 18, or, *ex gratia*, for a reasonable time, *Nost v. Simpson*, 78 Me. 142, stay proceedings until complainant establishes his title at law, *Fenton v. Steere*, 76 Mich. 405; *Hardy v. Mills*, 35 Wis. 141; *Chapin v. Sears*, 18 Fed. 814.

PRINCIPAL AND AGENT—FRAUD OF AGENT—SCOPE OF EMPLOYMENT—LIABILITY OF PRINCIPAL.—WILMERDING ET AL. V. POSTAL TELEGRAPH CABLE CO., 103 N. Y. SUPP. 594.—*Held*, that, where the messenger of a telegraph company, authorized to present memorandum slips of telegrams sent, and receive payment of the charges due thereon, presented a customer fictitious memorandum slips, which were paid by him and the money retained by the messenger, the telegraph company was liable to the customer for the money so paid, though the customer had a letter-press copybook of telegrams, and could have ascertained that he was being defrauded by a comparison of it with the memorandum slips presented. Laughlin and Scott, JJ., *dissenting*.

By the weight of authority the principal is liable for the misconduct of his agent in the apparent scope of his authority, *Huntley v. Mathias*, 9 N. C. 101; *McCord v. W. U. T. Co.*, 39 Minn. 181. Having once clothed him with the power to perform certain acts, the principal is responsible for the wrongs committed in that kind of work, *Haskell v. Starbird*, 152 Mass. 117; *Bank of Batavia v. N. Y. L. E. & W. R. Co.*, 106 N. Y. 195. And his responsibility is based on the fact that he has put it within the power of the agent to defraud innocent third persons. *Toome v. Parkersburg Branch R.*, 39 Md. 36. But the doctrine is subject to the qualification that the third person must act in good faith, *Allen v. So. Boston R.*, 150 Mass. 200, and prudently, *Farrington v. Same*, 150 Mass. 406. The fact that the third person by the exercise of proper diligence might have avoided the error is no defense. *Union National Bank v. Sixth National Bank*, 43 N. Y. 455. Customers have a right to assume that the agent is honest and are not required to particularly inspect for the purpose of discovering fraud. *Birkett v. Postal Telegraph Co.*, 94 N. Y. Supp. 918.

RAILROADS—CONSTRUCTION—OBSTRUCTION OF VIEW—NEGLIGENCE.—COWLES V. NEW YORK, N. H. & H. R. R. CO., 66 ATL. 1020 (CONN.).—*Held*, the mere neglect of a railroad company to cut down trees on its right of way in the vicinity of a grade crossing is not in itself actionable negligence in the absence of any statute requiring it to keep its right of way free from unnecessary obstructions to a view of the tracks by persons using an adjacent highway, although it may be considered with other circumstances in determining whether the company exercised care in the operation of its car at a particular time.

RAPE—EVIDENCE—COMPLAINT OF FEMALE.—PEOPLE V. BIANCHINO, 91 PAC. 112 (CAL.). In a prosecution for rape of a five-year old girl, committed toward the latter part of January, it appeared that the prosecutrix was examined on the 5th of February by a physician, who, a few days later discovered that prosecutrix was infected with a venereal disease.—*Held*, that evidence of complaints of the injury made by prosecutrix shortly before and after February 5th was admissible.